

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALLENDALE MUTUAL INSURANCE)
COMPANY,)

***Plaintiff*)**

v.)

Civil No. 97-133-P-C

LESLIE RUTHERFORD,)

***Defendant*)**

MEMORANDUM DECISION ON DEFENDANT’S MOTION TO AMEND ANSWER

Now before the court is the defendant’s motion, filed pursuant to Fed. R. Civ. P. 15(a), for leave to amend her answer to add an affirmative defense based on the statute of limitations (Docket No. 17). The deadline for joinder of parties and amendment of pleadings was September 29, 1997. Discovery closed on December 24, 1997 and the motion filing deadline was yesterday, January 7, 1998. The case is presently set for trial in March 1998. The sole asserted basis for the defendant’s motion, filed on December 19, 1997, is that the defendant retained new counsel in December who thereafter determined that she may have a statute-of-limitations defense to at least some of the plaintiff’s claims.

Rule 15(a) provides in relevant part that in these procedural circumstances a party may amend a pleading “only by leave of court . . . and leave shall be freely given when justice so requires.” Among the reasons for which a court may withhold such leave are “undue delay” on the part of the movant and “undue prejudice to the opposing party.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The matter is consigned to the trial court’s discretion. *Id.*

The First Circuit has made clear that when “considerable time has elapsed between the filing

of the complaint and the motion to amend, the *movant* has the burden of showing some valid reason for [her] neglect and delay.” *Grant v. News Group Boston, Inc.*, 55 F.3d 1, 6 (1st Cir. 1995) (citation omitted) (emphasis in original). “While courts may not deny an amendment solely because of delay and without consideration of the prejudice to the opposing party, . . . it is clear that ‘undue delay’ can be a basis for denial.” *Tiernan v. Blyth, Eastman, Dillon & Co.*, 719 F.2d 1, 4 (1st Cir. 1983) (citation omitted).

In this instance, the sole explanation for the delay in adding a new affirmative defense is the advent of new counsel for the defendant. The implication is that the defendant’s original counsel simply failed to determine that the statute of limitations could legitimately be raised on the defendant’s behalf. It is well-established that “the acts and omissions of counsel are visited upon the client,” *United States v. One Lot of \$25,721.00 in Currency*, 938 F.2d 1417, 1422 (1st Cir. 1991) (citation omitted), and thus the proffered explanation does nothing to justify the delay.

The reported cases discussing circumstances in which leave to amend was properly denied based on undue delay tend to involve time periods in excess of the four-and-a-half months that elapsed here between the answer and the motion to amend. In my view, this is because these cases were not subject to the strict case management regime, and attendant short timeline leading up to trial, that is applicable to this and other cases placed on the Standard Track pursuant to Local Rules 16.1 to 16.3. In these circumstances, the court must assess the delay in the context of the motion’s filing approximately two months prior to trial and within days of the end of the discovery period, which has now run.

The plaintiff reasonably contends that at least some additional discovery would be necessary should the court permit the defendant to add the proposed affirmative defense. Even if the plaintiff

could adequately respond to the new affirmative defense without additional discovery, its advent would still have an effect on the plaintiff's trial strategy at a late stage in the case. *See Tiernan*, 719 F.2d at 4 (citing this factor as an independent basis for finding prejudice to non-moving party). In these circumstances, there is prejudice to the plaintiff and undue delay by the defendant in seeking to add the new affirmative defense. For this reason, the defendant's motion for leave to amend her answer is **DENIED**.

Dated this 8th day of January, 1998.

David M. Cohen
United States Magistrate Judge